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J AS CONSTITUTIONALIST: A POLITICAL INTERPRETATION OF EXODUS 17:8-16 AND RELATED TEXTS

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In this Article, I argue that the pericope in Exodus 17:8-16, which recounts a wilderness battle between the Israelites and the Amalekites, should be interpreted as a political document written within the framework of the royal court in Jerusalem. The purpose of the text is to define power relations among four important institutions in the government: the king, the professional military, the priests of the official cult, and the bureaucracy of the royal court. The overall thrust is an attempt to limit the authority of the military vis-à-vis its civilian counterparts. The text, I will argue, utilizes symbols of political authority in order to emphasize a meaning that would have been apparent to the participants in the power structure of the Jerusalem court.

Because the text allocated, defined, and limited political power among organs of the government and because its place within the national epic made it resistant to subsequent alteration, it is appropriate to call this a "constitutional" provision. And, because it is typically attributed to the J source,¹ this Article is titled "J as Constitutionalist"—although, as will be argued, there are reasons of style and substance to suppose that this particular text may not have been committed to writing as early as the bulk of the J material.

This Article is structured as follows. Part I describes the leading interpretations offered by scholars of this pericope to date and identifies the shortcoming of each of these theories. Part II offers an alternative interpretation of the Amalekite episode as a political text and connects this tradition with two other Exodus texts: the immediately contiguous Exodus 18:1-27, recounting Moses' meeting with his fa-

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1. Some scholars, however, would assign the material to E. See Brevard S. Childs, *The Book of Exodus: A Critical, Theological Commentary* (Philadelphia: The Westminster Press, 1974), 312-313.

ther-in-law the priest of Midian, and Exodus 24:12-14, in which Moses instructs the people to bring their causes before Aaron and Hur during Moses' absence. I end with a brief conclusion.

I. LEADING INTERPRETATIONS

The text at Exodus 17:8-16 describes an engagement between the wandering Israelites and the Amalekites, a nomadic tribe associated with the wilderness of Sinai who appear repeatedly in the Bible as mortal enemies of the Israelites.² Amalek comes and fights with Israel at Rephidim. Moses tells Joshua to choose men and go out and fight. "Tomorrow," Moses says, "I will stand on top of the hill with the rod of God in my hand" (Exodus 17:9). Joshua fights as Moses commands, and Moses, Aaron, and Hur go to the top of the hill. When Moses holds up his hand, Israel prevails; when he lays down his hand, Amalek prevails. But Moses' hands grow heavy, and Aaron and Hur take a stone and put it under him, and he sits. Aaron and Hur hold up Moses' hands, one on each side, until the sun goes down. Joshua defeats the Amalekites and puts them to the sword (Exodus 17:13). The Lord then tells Moses to "write this for a memorial in a book, and rehearse it in the ears of Joshua: for I will utterly blot out the remembrance of Amalek from under heaven." Moses builds an altar, calls it "Adonai-nissi," and says "the hand upon the throne of the Lord. The Lord will have war with Amalek from generation to generation" (Exodus 17:16).

The pericope of the battle with the Amalekites does not easily lend itself to theological interpretation. It recounts a wilderness engagement between opposing forces in which God plays a subordinate role at best. Victory in battle is not attributed to God's intervention, but seems to have something to do with the action of Moses in holding up his hands with the assistance of Aaron and Hur. At most, the influence of the deity can be detected in the fact that Moses has brought with him the rod of God. God enters the picture only after the battle is won, instructing Moses to write down a memorial of the battle in a book and to tell Joshua that the Lord will blot out the memory of Amalek. It is difficult to find much grist for the theological mill in this story, and, not surprisingly, biblical scholars have done very little with it, treating it as a secondary text, at best, in the overall scheme of the Exodus narrative.

2. A later version of the story is found in Deuteronomy 25:17-19.

The critical analysis to the pericope has emphasized two principal factors. The first, more theologically-motivated approach stresses the treachery of the Amalekites in descending on the Israelites without warning or provocation. Representative of the theological approach is Nahum Sarna, whose commentary on Exodus accuses the Amalekites of being "impervious to any considerations of morality."³ By implication, the immorality of the Amalekites is justification for the subsequent implacable hostility of Israel and its God toward this group in later biblical traditions.

Sarna's approach struggles to make theological sense of the passage, but without much success. The figure of God plays a subordinate role in the passage, and Moses' uplifted arms convey no connotations of prayer. The passage does not place substantial moral blame on the Amalekites for their attack; it merely records factually that they came and fought with Israel at Rephidim. One would expect that, if the purpose of the passage were to emphasize the low moral standards of the Amalekites, the point would be made more explicitly. Further, as Sarna himself recognizes, the Amalekites had a perfectly good reason for concern: the Israelites potentially threatened Amalekite control over oases and pastures.⁴ Sarna implies that the Amalekites could have elicited the true facts—that the Israelites were only passing through and did not intend to supplant Amalek's hegemony in the region—but, given the evident lack of trust between the adversaries, why should the Amalekites have believed the Israelites? In any event, an attack by a threatened group on a large party of potentially hostile trespassers hardly seems like the kind of degraded moral evil that would justify placing the attacker under a ban of eternal enmity—especially when the outcome of the engagement was defeat for the aggressors. The theological approach to this passage is simply unconvincing.

The principal alternative interpretation, the etiological interpretation, combines historical and etiological functions. Martin Noth, for example, sees the tradition as preserving an authentic memory of a wilderness victory over the Amalekites, but, more importantly, as operating principally as an etiology for a particular hill, upon which was located a stone and altar that could be seen and identified with the

3. Nahum M. Sarna, *Exploring Exodus: The Heritage of Biblical Israel* (New York: Schocken Books, 1987), 121.

4. *Ibid.*, 124-125.

battle memories.⁵ A similar etiological approach is found in J.P. Hyatt's commentary⁶ and in an article by K. Möhlenbrink.⁷

The etiological interpretation of this text fares little better than the theological one, however. That the Israelites preserved historical memories of battles against the Amalekites may not be out of the question, but this particular battle was not a conclusive victory even in the Bible's own account, since the Amalekites appear repeatedly as enemies of Israel in later traditions. The idea that the text would serve as an etiology of a particular hill seems far-fetched. The hill in question was in the wilderness of Sinai, a place few Israelites would ever go or want to go. This was not a place which Israelites could readily point to and connect with a well-known story. The physical setting is not suggestive of an etiology; there were lots of hills in Sinai and many of them had rocks on top. Why would one such hill call for a particular explanation? Moreover, it is unlikely that this text arose in an oral tradition, as Noth implies. Rather than responding to the interest of an audience, as one might expect of an oral tradition, this text oddly locates the center of narrative attention away from the battle, minutely describing the actions of Moses, Aaron, and Hur while omitting completely any of the vibrant details of the action in the actual battle that an audience of an oral performance would likely crave. The interests of the narrator were not in delighting an audience; they appear to have been didactic and polemical. But what those interests were is not immediately obvious.

A different etiological explanation is found in Brevard Childs's influential book on Exodus.⁸ Childs sees the narrative as providing an explanation for the tradition of perpetual enmity between Israel and Amalek and as a justification within the society of ancient Israel for the hostile attitude toward this group. The text, however, provides a poor etiology for the traditions about the Amalekites, given that the Israelites won the engagement so convincingly. In light of the drubbing administered on the battlefield, it seems somewhat excessive to enhance the punishment with an irrevocable ban. If the principal purpose of the author was to offer an etiology for the Israelite hostility toward Amalekites, it would have been better to portray the

5. Martin Noth, *Exodus: A Commentary* (trans. J.S. Bowden; OTL; Philadelphia: The Westminster Press; London: SCM Press, 1962), 142-143.

6. J. Philip Hyatt, *Commentary on Exodus* (NCB; London: Oliphants, 1971), 183.

7. K. Möhlenbrink, "Josua in Pentateuch," *ZAW* 59 (1942-43), 16-24.

8. Childs, *The Book of Exodus*, 315.

Amalekites as having severely harried the Israelites, as in the Deuteronomist's account (Deuteronomy 25:17-19).

The emphasis on etiology in the pericope is challenged in a recent book by George W. Coats,⁹ who views etiology as being only of secondary importance. In Coats's view, the narrative's principal focus is on the role of Moses. Coats sees the tradition as a heroic legend depicting Moses' faithfulness and physical endurance.

Coats is quite correct to point to the centrality of Moses in this text: Moses is given a degree of importance in organizing and controlling the action that rivals or eclipses that of God. It is undoubtedly true, moreover, that the Bible contains a substrate of heroic legend that has been imperfectly recognized in biblical studies to date.¹⁰ To view this text, however, as principally conveying a heroic legend about Moses is unpersuasive. Moses does not act heroically, at least not within the traditions of legend. He influences the battle from afar by magic rather than risking his own life in the fray as a heroic leader should. Although he struggles to keep his hands raised, this is hardly the stuff of legend. Moreover, even in this he is unsuccessful, requiring the assistance of two aides, first to sit down and then to keep his hands aloft. Visualized as an actual battle scene, the narrative becomes comic rather than heroic: one imagines three men on a hill, two of them holding the other's hands in the air for an entire day. If there is heroism here of an epic or legendary sort, it lies not in Moses, but in the figure of Joshua who actually fights the battle. The text, however, downplays the role of Joshua by focusing attention away from the actual battle and by presenting Joshua as unable to prevail without help from Moses' hands. The view of the Amalek pericope as heroic legend fares no better than the other accounts.

As this discussion should indicate, the existing explanations of this mysterious text are incomplete at best. We are left searching for some alternative. I suggest, for reasons set forth in Part II, that the text can most plausibly be interpreted as a document setting forth fundamental allocations of powers within the political community of Ancient Israel.¹¹

9. George W. Coats, *The Moses Tradition* (Sheffield: JSOT Press Supp., 1993), 33-35.

10. For an insightful correction, see Susan Niditch's excellent *War in the Hebrew Bible* (New York: Oxford University Press, 1993), 90-105.

11. The analysis in this Article bears some resemblance to Joel Rosenberg's work, *King and Kin: Political Allegory in the Hebrew Bible* (Bloomington: Indiana University Press, 1986). Rosenberg, however, does not treat the Amalekite pericope, and there are many differences between his approach and the one utilized in this Article.

II. POLITICAL INTERPRETATION

The possibility of a political interpretation is suggested, initially, by the odd way in which the action is presented. The text shows no interest in portraying a realistic battle. The action, such as it is, takes place entirely on a hill overlooking the battle site. The battle itself is depicted in stylized terms: an all-day engagement among military forces is described, something that seems unlikely for two bands of wilderness wanderers, and the action occurs on low terrain, even though one would think that military strategy would call for taking the heights where Moses and his helpers stand. The text, moreover, shows extraordinary attention to details that have little obvious meaning in terms of the ostensible plot: the staff of Moses is mentioned as an important element of the story when Moses ascends the hill but is dropped out of the action thereafter, the stone that Aaron and Hur obtain as a seat for Moses, and the hands of Moses that are supported by Aaron and Hur, one on each side. These elements are evidently important in the structure of this narrative, yet their significance is not adequately explained. The entire story, moreover, has a stilted and unnatural quality, which is decidedly uncharacteristic of the J source generally. The possibility that we are dealing here with a complex of linked symbols thus suggests itself.

If we follow the possibility of a symbolic interpretation, we will seek to establish a correspondence between the explicit elements of the text and some other system of objects and relationships. Such a mapping can be achieved, with what appears to be a remarkable degree of precision, by relating the Amalekite pericope with the structure of political power under the Israelite monarchy.

The figure of Moses can be linked with that of the king. Moses is the font of all authority in the wilderness wanderings: he is the one who gives the orders, and he is the sole legitimate political leader of the people. The prominence of Moses is somewhat underplayed in the received text of the Bible because subsequent redactors enhanced the authority of the priesthood by elevating the role of Aaron in the narrative. In the original sources, however, Aaron is clearly a subordinate figure, and it is Moses who commands ultimate authority. In the Amalekite pericope itself, Moses is displayed in regal terms: he gives orders to Joshua, commands the flow of the battle through the power of his uplifted hands, and builds an altar in honor of the victory.

The idea that Moses is to be identified with the Israelite king is already known in the literature, although not universally accepted.¹² J.R. Porter carries the identification forward most systematically in his book *Moses and Monarchy*.¹³ Porter argues that the most inclusive category for understanding the figure of Moses in the Pentateuch

would seem to be that of the Israelite king, more specifically the Davidic monarch of the pre-exilic period, and there is a good deal of evidence to suggest that, whatever can be said about the historical facts of Moses' life, the normative biblical tradition about him was developed in Jerusalem.¹⁴

Moses, Porter argues, was "viewed in Jerusalem as the great prototype of the dynasty" with respect to his role as law-giver; his figure "thus linked that dynasty with the constitutive events of the nation's life, although the house of David was a comparative newcomer in Israel's history."¹⁵ Porter suggests that Moses is never described explicitly as a king because this would have been unacceptably anachronistic to an audience that preserved the historical memory of not having been ruled by a king before the rise of the monarchy in the Tenth Century.¹⁶

If Moses stands for the king, it is not difficult to identify the figure of Joshua. Joshua's role throughout the Bible is that of military leader. It is Joshua who commands the Israelite forces after the death of Moses and defeats the Canaanites during the invasion of the Promised Land.¹⁷ In the Amalekite episode itself, Joshua is depicted as the classic military commander. He picks the warriors and leads the forces in battle. Under a political interpretation, the figure of Joshua stands for the organized military within the power structure of the Israelite state.

Aaron, too, is easy to identify. Aaron represents the priesthood throughout the biblical traditions, and there is no reason to suppose that he should occupy any different role here. The priesthood of the official cult in Jerusalem was an important force in the power struc-

12. For a contrary view, see George W. Coats, *Moses: Heroic Man, Man of God* (Sheffield: JSOT Press, 1988), 21.

13. J.R. Porter, *Moses and Monarchy: A Study in the Biblical Tradition of Moses* (Oxford: Basil Blackwell, 1963), 7-28.

14. *Ibid.*, 8-9.

15. *Ibid.*, 13-14.

16. One might add that, if Moses was recorded as a legitimate king in this narrative, it could raise troubling questions for the Davidic monarchy about claims to the throne by persons claiming descent from Moses.

17. Although the dating of the Book of Joshua is problematic, it is likely that the written source, whenever it was composed, drew on a store of traditions that associated Joshua with military leadership.

ture of the Israelite state, and one would expect that interest to be represented in political symbolism dealing with power relations among the leading actors in the political system.

The Amalekites, too, are readily identifiable in symbolic terms. In the culture of ancient Israel, the Amalekites stood for the Enemy. Saul's battle against the Amalekites at 1 Samuel 15 is representative; the Amalekites are enlisted in the narrative as the prototypical enemy against whom the ban of total war is applied, and Saul is repudiated by Yahweh for failing to carry out the ban when he spares their king and some of their animals.¹⁸

The figure most difficult to identify is Hur. Biblical commentators have puzzled over Hur's sudden appearance in the narrative. He is evidently an important personage: he has status equal to that of Aaron, and he is equally relied upon by Moses for support. Yet Hur plays no significant role elsewhere in the J/E sources, except in Exodus 25:14, where Moses instructs the people to take their disputes to Aaron and Hur while he is on the holy mountain. Later tradition identified Hur as a member of the tribe of Judah (Exodus 31:2), but Hur's lineage is not stated in the earlier tradition. What group could Hur represent?

If we examine the power structure of ancient Israel, the figure of Hur would appear to represent the bureaucracy of the royal court. The bureaucracy was certainly an important power center—one of the most important groups in the political system along with the priesthood, the military, and the king. The existence of a substantial administrative apparatus is well-attested from the early days of the monarchy.¹⁹ These officials would have had an interest in establishing

18. Compare Deuteronomy 25:17-19 for a similar view of the Amalekites. It would have been convenient, within the structure of Israelite ideology, to identify the Amalekites as the image of the enemy. Other forces that presented a greater threat to the nation's national security—for example, Moab, Ammon, or Aram—could have been stigmatized as the enemy, but it did not serve the national interest to place these groups under a ban. These nations were powerful enough to warrant treatment by diplomatic means, and from time to time the Israelite monarchy would want to maintain friendly relations with them. The Amalekites, however, regardless of their treatment in the Bible, where they are portrayed as dangerous threats to Israelite sovereignty, were in fact a wandering Bedouin group who did not nurture territorial aspirations and whose actual military might was undoubtedly puny. Israelite culture could utilize this group in order to maintain the tradition of the ban, which undoubtedly had value to the society as a means of deterring foreign aggression, while not precommitting the nation to a costly and potentially disastrous conflict with a truly powerful foe. The tradition of hostility to the Amalekites may also have conferred a political benefit on the Israelite kings by giving them an easy target for successful military expeditions that would enhance their domestic popularity.

19. G.W. Ahlstrom, *Royal Administration and National Religion in Ancient Palestine* (Leiden: E.J. Brill, 1982); Trygve N.D. Mettinger, *Solomonic State Officials: A Study of the Civil Government Officials of the Israelite Monarchy* (Lund: CWK Gleerup, 1971).

and enhancing their position vis-à-vis the other power centers in the society. The very obscurity of Hur suggests the bureaucracy: like the bureaucracy, Hur is "faceless," a figure who exercises power by virtue of being selected by Moses rather than through any independent source of charisma.

A political interpretation of the Amalekite pericope receives further substantiation when we move from characters to the physical setting. The text repeatedly emphasizes that the action takes place on a hill where Moses, Aaron, and Hur have ascended to view the battle. The hill, in this picture, represents Jerusalem, the city built on the hill and the site from which the Israelite kings exercised their power. The stone that Aaron and Hur place beneath Moses is the throne, the seat of the king. The altar that Moses builds (evidently on the hill) corresponds to the temple built by Solomon in Jerusalem. The name that Moses gives the altar, "Yahweh nissi," is uncertain in meaning, being translated by some authorities as "the Lord is my banner," and by others, "the Lord is my throne." The interpretation of this pericope as a political text would support the latter reading, reinforcing the picture of Moses as representative of the kingship and suiting an ideology of divinely-sanctioned monarchy founded on annointment by the official state deity.

The rod might be seen as simply a magician's wand, but it is clearly more than that. It symbolizes political, and specifically royal, authority—the "ability of the monarch to accomplish his goals."²⁰ Rods appear throughout the royal iconography of the ancient Near East. Formalized images of the king in court, receiving tribute from subject peoples or giving instructions to ministers or courtiers, typically depict the monarch carrying a rod or staff.²¹ Significantly, the rod is almost never held in a lax or flaccid position. The arm that holds the rod is typically portrayed as bent at the elbow with forearm upraised. This detail is much too universal a feature of royal iconography to be an accident; we must suppose that kings when invested with the regalia of office were required by custom to hold the scepter in a raised posture. This gives meaning to the detail in the Amalekite pericope of Moses' arms becoming tired; since scepters were made of metal and often quite heavy, the king's arms in fact would become tired if he held court for extended periods without respite.

20. Coats, *Moses: Heroic Man, Man of God*, 67, cf. *ibid*, 186-190.

21. Even a cursory review of the images in James B. Pritchard, *The Ancient Near East in Pictures: Relating to the Old Testament* (Princeton: Princeton University Press, 1954), bears this out.

The hands too are a symbol of power in the Bible²² and, indeed, throughout the ancient Near East.²³ The importance of the hand as a symbol of power is illustrated in the pictorial iconography of royalty in ancient Near Eastern settings. In addition to their role in carrying rods, the king's hands are typically portrayed in strikingly prominent positions—they are frequently the focal points of the image.²⁴ Often, moreover, the king's hands are exaggerated in size, sometimes to nearly grotesque proportions relative to the rest of his body. Like the rod, the hands of the king are typically held upraised even if the king carries no scepter or other accouterment of office.²⁵

The hands and the rod are clearly linked symbols: the hand carries the rod, and both hand and rod convey the impression of political authority. One can distinguish differences between these symbols, however. The hand, being a natural part of the king's body, represents the natural, raw power of the state. When the Bible wants to project an image of extreme destructive force, the image is conveyed with the hand rather than the rod. The rod, in contrast, represents the authority of office—a meaning that is retained even today in bureaucratic language, when those charged with assisting the chief of an organization are referred to as "staff." In ancient Near Eastern royal iconography, court officials are often also depicted carrying staffs. Their subordinate position is indicated by the fact that their staffs are noticeably shorter than the king's.

One other element of the Amalekite pericope bears mention at this point, although it cannot be visualized. The text at several points emphasizes Moses' voice. Moses' orders to Joshua are quoted directly in the text, as is Moses' announcement placing the Amalekites under ban. Like the hand and rod, the voice of the leader is a symbol of authority: it is the power of persuasion and command. Taken to-

22. The typical reference is to the hand of God. See, e.g., Exodus 32:11. But the text also instances other references to the hands of Moses as symbols of extraordinary power, e.g., Exodus 10:21.

23. Childs, *Book of Exodus*, 315. Similar usages are attested in Egyptian sources for the hand or arm of Pharaoh. See James K. Hoffmeier, "The Arm of God Versus the Arm of Pharaoh in the Exodus Narratives," *Biblica*, 67 (1986), 378-387.

24. Again, the importance of the hands can be seen from virtually any of the examples of royal iconography in Pritchard, *The Ancient Near East in Pictures*, although, because the hand is a natural feature, unlike the rod, one must look carefully to observe the heightened emphasis given to the king's hands in these images.

25. The importance in the narrative structure of the rod and the hand is emphasized in Coats, *The Moses Tradition*, 38-39, but Coats does not draw any political connection to these images.

gether, the hands, rod, and voice symbolize different but related aspects of royal authority.²⁶

We are now in a position to analyze the symbolic meaning of the action in this narrative. The text appears to establish essential elements of the power relations of important figures within the Israelite monarchy. The command that Moses gives to Joshua, "pick your men, and march out tomorrow to fight for us against Amalek," concisely establishes a relationship between the military and the king. The king is the one ultimately in command and makes the decision about whether to fight or not. But the military leader has a substantial measure of discretion over the conduct of military operations in the field.

First, the text gives the commander the power to pick his soldiers, a power that would have been valuable for the effective functioning of the military since the leader is able to secure a loyal and reliable fighting force. Note that the power to select soldiers would not have been uncontroversial within the Jerusalem power structure. The power of selection carried with it substantial patronage and therefore the ability to build a political base; and the benefits of giving the military leader discretion over the selection of men were balanced in part by the danger that the leader would select individuals whose loyalty ran more to himself than to the king. Despite these dangers, the text appears to resolve the issue in favor of military control over recruitment.

Second, and equally important, the text grants the commander day-to-day control over military operations, at least when the king is not present on the field. Moses' instructions are only to "fight Amalek in the morning." Nothing is said about strategies or tactics. And Moses' actions in raising and lowering his hands appear to exercise a general influence on the engagement, but do not convey any instructions about particular battlefield decisions. Again, there would seem to be social value in allowing the commander in the field discretion in the conduct of hostilities, subject to overall oversight of the king and to the king's authority to make the basic decisions. This sensible allocation of authority between political and military leaders has characterized many governments through the ages.

One noteworthy feature of the text, which has puzzled commentators, is that it stresses the fact that Moses goes up the hill with the staff of God in his hand and then completely ignores the staff once he has actually ascended. This detail can be understood within the

26. Another symbolic complex involving Moses' rod, hands, and voice is Exodus 4:1-17. That text, however, raises complex issues that are best treated separately.

framework of a political interpretation. The staff represents the authority of office; Moses says, symbolically, that he will go up the hill with his staff. This is exactly what he does, since he takes his staff, Aaron, and Hur, with him. Once Moses ascends the hill, references to the staff become unnecessary since Aaron and Hur are with him.

What do we make of the influence of Moses' raised hands? As we have seen, the hands represent the raw power of the state, which flows ultimately from the king. When Moses' hands are raised, the king is providing the royal oversight, supervision, and authorization necessary for the successful conduct of the battle. The text tells us that military operations will succeed only if the king is actively engaged in the conduct of government. By implication, also, the text asserts that however successful the battlefield commander may be, credit for the ultimate victory must go to the king. The text stresses that the military is ultimately subject to royal control and thus disapproves military operations conducted outside the scope of royal authorization.

Aaron and Hur's conduct in putting a seat under Moses and holding his hands aloft can readily be explained within the framework of a political interpretation. Moses' fatigue provides a justification for the positions of authority that Aaron and Hur hold as representatives of the priesthood and the bureaucracy. The text explains the need for creating agencies subordinate to the king: powerful as the king is, he cannot do everything by himself. Power must be delegated to ministers in order to govern the affairs of a significant state.

The action of Aaron and Hur in sustaining Moses' hands also carries a message about power relations between civil and military authority. Because Moses is unable to keep his hands raised and because the battle will be lost if he does not, it follows that Aaron and Hur are necessary to the successful conclusion of the operation. The civil authorities, in other words, are claiming, through the king, some measure of control over the military.

Finally, the text tells us something about the relationship between Aaron and Hur. Aaron and Hur are portrayed as complete equals. Neither is given pride of place. Both are favored by Moses, and both are needed to hold up Moses' two hands. Not accidentally, the text is silent as to who held which hand—a detail that would have estab-

lished a precedence as between Aaron and Hur because of the primacy of the right in ancient Near Eastern cultures.²⁷

Within the framework of the political interpretation, the equality of Aaron and Hur generates several inferences. Two equally powerful ministers are not likely to cooperate amicably—at least not for long—even if their jurisdictions can be clearly demarcated. The text obscures what must have been tensions between the priesthood and the bureaucracy. We may infer that the principal objective of this text was to establish civilian control over the military—an important goal, given the potential threat that a well-armed standing army can pose for any civilian government. Because the priesthood and the bureaucracy shared a concern for limiting military power, it was in their interest to gloss over differences between them in this context.

As to the particular interest group that pushed for this measure and obtained its insertion within the foundational document of the Israelite state, the most likely candidate is the bureaucracy. The emphasis on the figure of Hur in this pericope contrasts with many other texts in which the role of Aaron is stressed and Hur does not appear at all. The unusual downplaying of the role of Yahweh similarly points to a source with interests opposed in some respects to those of the priesthood. Although the conclusion is necessarily speculative, we may surmise that this text was prepared and inserted into the national epic sometime during the Israelite monarchy—probably some time later than the J source to which the text is ordinarily assigned—and that the author of the text was someone associated with the state bureaucracy.

Two other texts provide support for a political interpretation of the Amalekite episode. First, consider Exodus 24:12-15. Here, the Lord instructs Moses to “come up to me on the mountain, stay there and let me give you the tablets of stone, the law and the commandment, which I have written down that you may teach them.” Moses arises with Joshua his assistant and goes up the mountain, saying to the elders of Israel, “Wait for us here until we come back to you. You have Aaron and Hur; if anyone has a dispute, let him go to them.”²⁸

It should immediately be obvious that this text connects with the Amalekite episode, since in both the mysterious figure of Hur appears as an important aide to Moses. The purpose of this text from the

27. For discussion, see Geoffrey P. Miller, “Verbal Feud in the Hebrew Bible: Judges 3:12-30 and 19-21,” forthcoming in the *Journal of Near Eastern Studies* (1996).

28. This text is often assigned to E, but there is little consensus among the commentators.

standpoint of a political interpretation is to confer on Aaron and Hur the authority to adjudicate disputes in Moses' absence. The example of a king's absence given in the text is that of the king leaving for an extended time in the company of his military commander. This story thus refers to a paradigmatic situation in which the king would absent himself from the capital: the military campaign in which the king traveled with the army in the company of his military commander.

Unlike the Amalekite pericope, however, this text is not particularly addressed against the military as a potential rival for power. It is unlikely that military authorities performed civil judicial functions of the sort addressed here. The group whose power is being checked by this text is easy to identify, however. Moses tells the "elders of Israel" to await his return and to allow disputes to be taken to Aaron and Hur in his absence. The tribal elders would have been natural rivals for the king's judicial power, especially during the earlier days of the monarchy when the traditional powers of tribal leaders would not have been fully displaced by the Jerusalem court. This king's primacy over adjudication of disputes was evidently well-established when the king was acting in his personal capacity—that is, when lawsuits were brought to the king in person. When the king was absent, however, the tribal elders may well have asserted their traditional rights. This text rejects the claims of the tribal elders and delegates judicial authority to the priesthood and the civil bureaucracy. Like the Amalekite pericope, this text has a constitutional dimension: it defines and limits the powers of important institutions in the society and places the allocation of power outside the play of ordinary politics by embodying the decision in the foundational document of the Israelite state.

The final text discussed in this Article—Jethro's visit to the Israelite camp at Sinai (Exodus 18:1-27)—further supports a political interpretation of the Amalekite episode.²⁹ The narrative recounts how Moses' father-in-law, the priest of Midian, comes to Moses at the mountain of God accompanied by Moses' wife Zipporah and his two children. Moses receives him with courtesy, and Jethro sacrifices to God and shares a meal with Moses, Aaron, and the tribal elders. The next day Moses takes his seat as magistrate among the people. Jethro warns Moses that he is not acting wisely and that if he tries to adjudicate all disputes by himself he will wear out not only himself, but also all the people around him. Jethro advises Moses to make the law

29. Similarities between this text and the Amalek story are noted in Bernard P. Robinson, "Israel and Amalek: The Context of Exodus 17.8-16," *JSOT* 32 (1985), 15-22.

known to the people generally, but to search for capable men from the people, honest and incorruptible, and appoint them as officers over units of a thousand, a hundred, fifty, or ten people.

They shall sit as a permanent court for the people; they must refer difficult cases to you but decide simple cases themselves. In this way your burden will be lightened, and they will share it with you. If you do this, God will give you strength, and you will be able to go on. And, moreover, this whole people will here and now regain peace and harmony.³⁰

Moses takes his father-in-law's advice and implements a permanent court.

The political meaning of this text is nearly self-evident. Moses stands for the king in his judicial capacity. The text endorses and validates the institution of permanent lower courts and establishes a sensible jurisdictional rule of a sort that is often seen today among developed judicial systems: the easy cases are adjudicated by the inferior courts, and the hard cases are sent to the higher courts for decision.³¹ Three justifications are suggested for the institution of lower courts. First, as in the Amalekite pericope, the burden on the king would be too great if he had to decide all disputes for himself. As Jethro says: "the task is too heavy for you; you cannot do it by yourself."³² Second, lower courts will benefit litigants because their cases will be heard quickly; parties with a dispute will no longer have to stand around Moses "from morning to evening," and justice will be established "here and now."³³ Third, because they will adjudicate cases rapidly, lower courts will contribute to the establishment of "peace and harmony" among the people, a condition which benefits everyone, not solely those who have grievances to be heard.³⁴

Like the other texts considered in this Article, the visit of Jethro establishes constitutional norms in that it allocates power among different authorities. Although the creation of inferior courts may seem like a technical detail of governance, it in fact is an important decision

30. Exodus 18:22.

31. Raymond Westbrook has alerted me to the fact that the political significance of this text, as concerned with the constitutional position of monarchical versus elders' courts, is well-recognized. See Hanoeh Reviv, *The Elders in Ancient Israel: A Study of a Biblical Institution* (Jerusalem: The Magnes Press, 1989).

32. Exodus 18:18.

33. Exodus 18:22.

34. Exodus 18:23.

for any political system, implicating as it does the balance of power between the center and the periphery of a society.³⁵

Again, it is not difficult to infer the identities of the interested parties. The tribal elders would probably have objected to the establishment of permanent lower courts, because such courts threatened to take away jurisdiction that they had traditionally exercised over intra-tribal disputes. The official priesthood may also have objected, because the creation of inferior courts may have threatened to extinguish whatever residual civil judicial authority the priests may have possessed at the time of this reform. The civil bureaucracy, on the other hand, was unlikely to object to the creation of inferior courts, because these institutions were likely to be placed within the overall framework of the bureaucracy and thus probably represented an enhancement of the authority of the king's ministers.

There is some textual basis for concluding that the institution of inferior courts was opposed by the priesthood and the tribal elders and supported by the bureaucracy. A noteworthy feature of the text is that Jethro sacrifices to the God of the Israelites, and shares the sacramental meal with Aaron and the elders of Israel. The text thus establishes that Aaron and the elders of Israel—that is, the priesthood and the traditional tribal leaders—must recognize the Midianite priest's standing to speak on matters internal to the Israelite people. At the same time, Hur is conspicuous for his absence in this text, which immediately follows the Amalekite episode in which Hur plays an important role. It would not have been necessary for the author to include Hur in the sacrificial meal since Hur, representing the bureaucracy, did not object to the proposal. Notably, the creation of inferior courts is neither commanded nor endorsed by Yahweh—an indication that the institution was not congenial to the interests of the priesthood who spoke in Yahweh's name.

What is the relationship between the establishment of inferior courts and the commission of Aaron and Hur to settle disputes in Moses' absence? Although there may be some tension between these two texts, they are not contradictory. One deals with the creation of inferior courts, the other with the authority to decide disputes in the king's absence. It would be quite consistent for representatives of

35. To cite a modern analogy, the question whether there would be inferior federal courts was one of the most contentious topics in the debate over the framing of the U.S. Constitution because of sensitivity among the states about their potential loss of jurisdiction. The Framers were unable to resolve this issue at the constitutional convention and ultimately crafted a compromise giving Congress the ultimate say as to whether such courts would be established.

both the bureaucracy and of the priesthood to sit in those cases that were important enough to come directly to the king, since such matters were likely to raise questions of fundamental state policy as to which the input of the priesthood would be needed. Alternatively, it may have been the case that the priesthood maintained an independent dispute-resolution system for adjudicating matters falling within the purview of the religious authorities—a system of religious or canon law—subject to the same rules for referral to the king as applied in the civil courts. If so, it would be necessary for the priest to act in the king's stead in cases arising out of the religious jurisdiction, and the commission to Aaron could have been limited to such cases. We do not have enough information about the government of ancient Israel to make a judgment about this question. What does appear, however, is that there is no inconsistency between the political readings of Exodus 18:1-27 and Exodus 24:12-15.

I now turn to a consideration of how all the texts discussed in this Article authenticate themselves. What features of these texts served to validate them in the minds of the people such that they would have binding force as constitutional provisions rather than merely being treated as polemical tracts authored by one or another of the competing interests?

One can identify a number of strategies for authentication in these texts. First, these texts were inserted into the body of a document that already had acceptance as an authoritative national epic. The very presence of the texts within the document was an indication that they had achieved the status of constitutional norms—that is, norms of fundamental law that are insulated by some mechanism from ready alteration in the ordinary course of events.

Beyond this, the specific location of these texts within the national epic is important with respect to their authentication as constitutional provisions. These passages bracket the theophany at Sinai—the Amalekite episode, the visit of Jethro occurring just before the theophany, and the commission to Aaron and Hur occurring just after. The rhetoric of these texts indicates the possibility that they are inserts into a pre-existing narrative; like the Amalekites, they appear without much warning in the narrative and remain quite isolated from the surrounding context.³⁶ The Sinai events were evidently already attached to the structure of the biblical narrative at the time these

36. The isolation of the Amalek pericope from its surrounding context has been noted by other commentators, notably Coats, *The Moses Tradition*, 32.

three narratives were created. To enhance the authority of the stories, the author or authors inserted them in a position proximate to the fundamental legitimating and law-providing event in the Israelite national epic. Placing the action at this spot involved some narrative cost—for example, the Amalekites are not typically identified with the location of Rephidim³⁷—but the author or authors were willing to bear these costs in order to stress proximity to the theophany.³⁸

The texts are also authenticated by the identity of the protagonists. Moses is the principal figure in all three stories. We may assume that at the time these texts were created the authority of Moses within the structure of the Israelite national epic was so well-established as to make a narrative about Moses, in a sense, self-authenticating. Given the connection we have noted between Moses and the kingship, it is possible that any text involving Moses would have needed the sanction and approval of the king before it could be included in the epic.

The presence of the priest of Midian at Sinai presents something of a puzzle, since the authority of a foreign priest over internal Israelite affairs is not self-evident. It is possible that this figure became associated in popular culture with the introduction of new forms of social organization; if so, he might have been a suitable figure to cast in the role of the inventor of permanent courts, an institution that apparently did not exist previously and that could have been seen as a foreign import. The priest of Midian, moreover, carried at least some charisma as an original worshipper of the Israelite god; he may also have served the narrative goal of obliquely suggesting that the institution of a system of standing inferior courts had some sort of divine sanction, even though the official priesthood under Aaron was unwilling to confer direct sanction from Yahweh.

One final form of authentication of the Amalekite episode is worth noting. This text provides an explanation for the tradition of perpetual enmity with the Amalekites, which was apparently a well-known feature of Israelite culture at the time the text was created. This is a form of etiology, but it is important to distinguish this type of etiology from the more usual understanding. The traditional etiological explanation views a text as having as its *purpose*, or one of its

37. Childs, *Book of Exodus*, 314; Hyatt, *Commentary on Exodus*, 183.

38. The strategy of inserting newly-created texts as close as possible to the Sinai theophany can be observed elsewhere in Exodus; indeed, the bewildering confusion of the events at Sinai itself indicates frequent revisions and editions of this text in order to serve the political interests of the tradents or those whom they served.

purposes, the explanation of the origins of some noteworthy feature of contemporary society. The etiology of authentication discussed here has a different function. The purpose of the text, in this view, is not to explain a feature of contemporary society, but rather to authenticate and validate *the text itself* by tying it through narrative to some well-known and readily observable phenomenon. If the rhetorical link could persuasively be established between the received tradition of holy war against the Amalekites and the pericope of the wilderness battle, then the public would more readily accept as valid the authenticity of the wilderness battle text and the political message that it contained.

III. CONCLUSION

In this Article, I have proposed that the pericope of the wilderness battle with the Amalekites, along with its cognate texts, the visit of Jethro and the commission to Aaron and Hur, should be understood as political documents written within the royal court in Jerusalem. The texts presume a well-established state and depend on the presence of an existing tradition—a tradition that already knew the figures of Aaron and Moses and the theophany at Sinai.

I have argued that these texts embody norms that today we would recognize as constitutional in dimension: they allocate and define the powers of important agencies of the government, and they were insulated to a substantial degree from the ordinary play of political forces by virtue of being embodied in the national epic. Overall, these texts appear to serve the interests of the state bureaucracy in the Jerusalem court by limiting, in various respects, the authority of the military, the priesthood, and tribal leaders.

If this theory is accepted as a plausible account of the texts in question, it might be productive for biblical scholars to consider whether texts other than the ones considered here can also bear construction in political terms.